

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No 01-92
Universal Service)	
)	
Comments Sought on Amendments to the)	DA 07-738
Missoula Plan Intercarrier Compensation)	
Proposal to Incorporate a Federal Benchmark)	
Mechanism)	

**REPLY COMMENTS OF
THE NEBRASKA RURAL INDEPENDENT COMPANIES**

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SUMMARY

The Nebraska Rural Independent Companies (the “Nebraska Companies”) commend the state commissioners and staff for the efforts and insight that led to the Federal Benchmark Mechanism (“FBM”) in conjunction with Missoula supporters. The FBM balances the interests of states and consumers across the nation by accommodating a range of historical state actions relative to intrastate access charges. The FBM also helps to promote rate comparability among consumers in all states by requiring additional end-user increases where basic local exchange rates are low before those providers can seek funding from the restructure mechanism.

The Nebraska Companies appreciate the opportunity to respond to comments filed in this proceeding. Many of the criticisms of the FBM are without merit, as explained below.

The Nebraska Companies submit that the FBM should be judged on the basis of its net benefits to consumers nationwide and not on whether every state receives a net benefit. The Nebraska Companies assert that the FBM is appropriately sized to ensure equity between the states. The FBM should not result in an increase in overall end-user payments, as consumers in early adopter states should benefit from lower or no increase in subscriber line charges (“SLCs”) or a reduction in state USF assessments.

The Nebraska Companies submit that while no rationale was presented for the selection of the benchmark targets contained in the FBM, the level of the benchmark targets is appropriate based on national average data. Furthermore, the FBM addresses concerns about the use of the residential revenues per line metric being used as a reasonable proxy for historical intrastate access rate actions.

The Missoula Plan (the “Plan”) and the FBM, which is one of its components, balances the Federal Communications Commission’s (“Commission”) goals for rate unification with the role of state commissions in the ratemaking process. The Plan contains a combination of mandatory provisions and voluntary provisions with incentives.

The Commission should consider the FBM improvements to the Plan as further evidence of the Plan’s viability as a fair and reasonable intercarrier compensation solution. The Nebraska Companies support the inclusion of the FBM as part of the Plan and urge the Commission to proceed expeditiously with the adoption of the Plan.

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**REPLY COMMENTS OF
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I. Introduction

The Nebraska Rural Independent Telephone Companies (“Nebraska Companies”)’ hereby submit reply comments in the above captioned proceeding. The Nebraska Companies appreciate the opportunity to reply to comments in this matter filed in response to the Federal Communications Commission’s (“Commission”) Public Notice (“Notice”) released on February 16,2007 in the above captioned proceeding. In the Notice the Commission sought comments on amendments to the Missoula Plan (the “Plan”) that incorporate a proposal addressing issues faced by “early adopter” states; that is, states that have already taken steps to substantially reduce intrastate access rates. The proposed amendments are referred to as the Federal Benchmark Mechanism (“FBM”).

¹ Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco, Inc., Consolidated Telecom, Inc., Consolidated Telephoie Company, Eastern Nebraska Teleplioie Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K&M Telephone Company, Inc., The Nebraska Central Telephoie Company, Northeast Nebraska Telephone Co., Rock County Telephone Company, Staiton Telecom, Inc. and The e River Telco.

The Nebraska Companies wish to recognize the efforts of the slate commissioners and staff for the hard work and insight that brought the group to the benchmarking approach. This approach changed the focus and end result from one that simply provided recognition for those states that had acted already to an approach that addressed overall consumer equity issues.

The Nebraska Companies reaffirm their initial comments in this docket, filed on March 28, 2007, and wish to further address issues associated with the FBM brought up by other commenters.

II. The FBM Balances the Interests of States and Consumers Across the Nation.

The Plan as initially filed recognized the creation of a new Early Adopter Fund to provide funding to states that have reduced their intrastate access rates prior to the Plan's adoption. Supporters of the Plan have worked with interested state commissions and their staffs to develop the FBM, which if adopted, will accomplish greater end-user rate comparability for consumers across all states while promoting equity for early adopter states.

The FBM recognizes and accommodates the range of historical state actions relative to intrastate access charges, while mitigating the impact of the Plan on consumers that already pay higher rates and fees by targeting new federal support to states that have previously increased end-user rates and/or implemented state universal support mechanisms. The FBM helps promote rate comparability among consumers in all states by providing funding to states where basic local exchange service rates are high and by requiring additional end-user increases where basic local exchange rates are low before those providers can seek funding from the restructure mechanism.

The Nebraska Companies disagree with the Virginia State Corporation Commission Staff that the main purpose of the FBM is to increase federal USF support to various ILECs and states as a means to gain support for other provisions of the Missoula Plan.² Further, the Nebraska Companies do not believe the basic premise of the FBM is inappropriate and misplaced.³ Rather, as the Public Service Commission of Wisconsin commented, the FBM recognizes states that have already instituted rate rebalancing, and it assures that customers in those early adopter states do not bear an extra burden of funding the Restructure Mechanism (“RM”) support in order to reduce intrastate access revenues in states that were not early adopters.⁴ However, the Nebraska Companies are in agreement with the Virginia State Corporation Commission Staff that if state commissions have taken steps to reduce intrastate access charges and correspondingly raised local rates, specific documentation should be required prior to FBM implementation. In addition, the FBM is more fundamental to ensuring consumer equity through the benchmarking approach, minimizing the impact on consumers who already pay high rates while expecting consumers with low local rates to pick up more of the rebalancing costs than those consumers that have been paying for higher rates for some time.

² See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the Virginia State Corporation Commission Staff, March 19, 2007, at p. 13.

³ Id. at p. 12

⁴ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the Public Service Commission of Wisconsin, March 19, 2007, at pp 1-3

III. The FBM Should Be Judged on the Basis of its Net Benefits to Consumers Nationwide and Not on Whether Every State Receives a Net Benefit.

According to the New Jersey Board of Public Utilities, the proposed amendment makes the Missoula Plan considerably worse for New Jersey and at least five other states that would be negatively affected by the so-called “Low Rate Adjustment.”⁵ However, other states have recognized that the FBM provides considerable benefits to Early Adopter States,⁶ and that it attempts to provide a more balanced allocation of benefits to early adopter states.⁷ The Nebraska Companies submit that the FBM should not be judged and rejected based upon its effect of the Low Rate Adjustment on a few states, rather, it should be assessed based upon its net benefits to consumers nationwide. The Nebraska Companies submit that \$578 million in Category A Funding that is created under the FBM, which would be used to replace any foregone interstate residential subscriber line charge (“SLC”) increases, far outweighs the estimated \$25 million attributable to the Low Rate Adjustment.

IV. The Level of the Benchmark Targets in the FBM is Appropriate Based on National Average Data.

Some parties have expressed concerns with the minimum and maximum benchmarks of \$20 and \$25. According to the Texas Statewide Telephone Cooperative, while the benchmarks may be reasonable, the FBM plan does not include any supporting

⁵ *id.* at p. 7.

⁶ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the Wyoming Public Service Commission, March 19, 2007, at p. 3.

⁷ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the Public Utilities Commission of Ohio, March 19, 2007, at p. 5.

data or analysis as to how these particular rate benchmarks were determined.⁸ Qwest believes that the high and low benchmarks appear to have been chosen at random.' While the FBM plan did not present supporting rationale as to why the high benchmark target and low benchmark target were chosen, the Nebraska Companies believe that when examined against nationwide rate data, the benchmark targets are appropriate.

The most recent data on residential rates for local service in urban areas indicates that the nationwide average total monthly charge for flat-rate service is \$24.74, including federal and state subscriber line charges, taxes, and 911 and other surcharges."⁹ Therefore, the high benchmark target is roughly equal to the nationwide average residential rate in urban areas. It is appropriate that states with rates above the national average receive support so that their rates can move closer to the national average and help fulfill the goal in the Telecommunications Act of 1996 (the "Act") of reasonably comparable service available at reasonably comparable rates."¹⁰

The low benchmark target rate is about one standard deviation below the nationwide average rate."¹¹ Requiring carriers that have a sum of residential revenues per line plus a residential SLC increase below the low benchmark target rate to increase their SLCs by an additional amount not to exceed \$2.00 is fair and reasonable. Doing this will

⁸ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of Texas Statewide Telephone Cooperative, Inc., March 28, 2007, at p. 2.

⁹ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of Qwest Communications International, Inc., March 28, 2007, at p. 4.

¹⁰ See Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service, Federal Communications Commission, 2006 ("*Reference Book*") at Table 1.1

¹¹ See 47 U.S.C. § 254(b)(3).

¹² The nationwide average rate is \$24.74 and one standard deviation is \$4.92. Therefore, one standard deviation below the nationwide average rate is \$19.82. See *Reference Book* at Table 1.13 for data.

also serve to promote the Act's universal service principle that reasonably comparable service should be provided at reasonably comparable rates, as it would increase the lowest rates so that the rates are closer to the average rate.¹³

CTIA argues that some states have found end user rates of more than \$25 to be affordable, and that the \$25 high benchmark target is therefore arbitrarily low.¹⁴

However, the Commission is charged with maintaining rate comparability *among* states, therefore, the Commission cannot design programs to meet nationwide mandates around the findings of individual states that a rate is affordable within a particular state.

V. The Federal Benchmark Proposal Already Addresses the Concern about the Use of the Residential Revenues per Line Metric being a Reasonable Proxy for Historical Intrastate Access Rate Actions.

Some states and NASUCA have asserted the fact that the residential revenues per line are lower than the Low Rate Benchmark is not absolute proof that a particular state commission or company has not taken action on reducing state access charges.¹⁵ The Florida Public Service Commission ("Florida Commission"), for example, states that there may be many explanations as to why a state's single party residential service is priced above or below the plan's rate benchmark that have little or nothing to do with

¹³ Statistical theory indicates that given a normal distribution, about one-sixth of residential rates nationwide would be below the low benchmark rate, while one-third of residential rates would be between the low benchmark rate and the high benchmark rate. See Robert D. Mason, *Statistical Techniques in Business and Economics* (Homewood: Richard D. Irwin, Inc., 1974) at p. 117.

¹⁴ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of CTIA – The Wireless Association on the Early Adopter Amendments to the Mississippi Plan, March 19, 2007, at pp. 12-14.

¹⁵ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the National Association of State Utility Consumer Advocates on the Federal Benchmark Mechanism, March 19, 2007, at p. 8.

intrastate access charge reform.¹⁶ The New York State Department of Public Service asserts that the premise that states which have low end-user rates must not have reduced intrastate access rates ignores the real possibility that a state's rate levels might be outside the Mechanism's benchmark due to reasons other than prior rate rebalancing.¹⁷

The Nebraska Companies agree with the assertion that there may not always be a correlation between low local service rates and no action on state access charge reform. However, it is likely that in most cases there is such a correlation, and further, when such a correlation does not exist the Federal Benchmark Mechanism fairly accommodates historical state access reform without high end-user rates as evidence. More specifically, in a situation where the Residential Revenues per Line plus Residential SLC Increase would nominally trigger a Low Rate Adjustment of up to \$2.00, such an adjustment would not occur if a state has taken significant action to implement access parity" by reducing intrastate switched access charges.¹⁹ Therefore, if a state has taken action to reform intrastate access charges, no additional SLC increase will be imposed by the Federal Benchmark Mechanism.

¹⁴ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the Florida Public Service Commission, March 19, 2007, at p. 2.

¹⁷ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the New York State Department of Public Service, March 19, 2007, at p. 4.

¹⁸ See Letter from Peter Bluhm, Esq., Vermont Public Service Board; Christopher Campbell, Telecommunications Director, Vermont Department of Public Service; Steve Furtney, Chairman, Wyoming Public Service Commission; Angela DuVall Melton, Esq., Nebraska Public Service Commission; Joel Shifman, Esq., Maine Public Utilities Commission; Joseph Sutherland, Executive Director, Indiana State Regulatory Commission; and the Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed January 30, 2007), Attachment ("Federal Benchmark Mechanism") at Section C.6.

¹⁹ Id. at Section D.4

VI. A Rational Intercarrier Compensation Reform Plan Must Balance the Commission's Goals for Rate Unification and the Role of State Commissions in the Ratemaking Process.

The Nebraska Companies recognize concerns expressed by several state commissions²⁰ regarding the Commission's jurisdictional authority over intrastate access rates. There are, however, some realities and clarifications that must be taken into consideration when the Commission considers intercarrier compensation reform as proposed in the Plan. First, it must be recognized that the goal of a unified intercarrier compensation regime cannot be achieved without the institution of an overall national framework for reform. The Plan proposes to achieve this unified national framework through a combination of mandatory provisions and voluntary provisions with incentives.

Second, the setting of federal end-user rate caps is appropriately the domain of the Commission and the Commission can exercise its authority to modify its end-user rate cap rules.²¹ This action alone would not impinge on state authority. The Commission also has the authority to reassign cost recovery associated with the federal end-user rates in the federal access regime under the conditions specified in federal law.²² Reduced to its basic form, the FBM is no more than a modification to the federal end-user rate cap parameters as proposed in the original Plan that results in an overall net reduction to the proposed federal end user cap increases nationwide.

Finally, the Plan recognizes that the most significant rate differentials between state and federal access charges exist with Track 3 carriers and therefore the greatest rate

²⁰ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Continents of the New York State Department of Public Service, at p.3, Comments of the Florida Public Service Commission, at p. 4, and Comments of the Public Utilities Commission of Ohio, at p. 2.

²¹ See 47 C.F.R. § 69.104 and §69.105.

²² See 47 U.S.C §201, §205, and §410 (c).

change in the Plan is associated with this class of carrier. Therefore in deference to state commissions, the adoption of the Track 3 rate changes in the Plan is implemented at the discretion of state commissions.²³ The Plan provides significant incentives to a state commission to adopt the Plan through eligibility for both the Early Adopter Restructure Mechanisms.²⁴

VII. Overall End-User Payments Will Not Increase as a Result of the FBM

Frontier asserts that the FBM places a disproportionate burden on the residential end-user by requiring a greater burden on the Universal Service Fund and on end-user prices, and that the estimated \$806 million is a “heavy price to pay” to gain a few additional Plan supporters.²⁵ The Public Service Commission of Wisconsin questions whether or not the \$800 million FBM is affordable.²⁶

The Nebraska Companies disagree with the assertions that there will be a greater burden on end-users nationwide as a result of the PBM. Comments suggesting that the FBM will adversely impact consumers overlook that consumers in early adopter states will benefit from lower or no increase in SLC charges or a reduction in state USF assessments. Therefore, overall end-user payments will not increase as a result of the FBM

²³ See Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force, CC Docket No. 01-92, at 2 (filed July 24, 2006) (attaching the Missoula Plan) at section I.B.2.b. (Missoula Plan).

²⁴ Id. at Section I.C

²⁵ See *In the Matter of Developing a Unified Intercarrier Coinpensation Regime*, CC Docket No. 01-92, Comments of Frontier Communications on the Federal Benchmark Mechanism Amendments to the Missoula Plan, March 28, 2007, at p. 1.

²⁶ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the Public Service Commission of Wisconsin March 19, 2007, at p. 7.

VIII. The PBM Must be Appropriately Sized in Order to Ensure Equity Between the States.

The Florida Commission expressed concerns that the initially proposed early adopter fund of \$200 million has evolved into the new FBM of \$806 million.²⁷ However, as the Nebraska Companies have previously commented regarding this matter, a mechanism that is designed to defray some state USF cost would likely exceed the threshold level of \$200 million for the federal Early Adopter Fund. In their comments, the Nebraska Companies cited the results of a survey from the National Regulatory and Research Institute (“NRRI”) regarding jurisdictions that either have a functioning high-cost universal service fund (“USF”) or a high-cost USF under revision.²⁸ The NRRI report detailed the amounts for the then most current period dispersed by all state jurisdictions for high-cost support to exceed \$1.3 billion. The FBM working group’s estimate that approximately \$806 million will be required to incorporate the FBM proposal into the Plan is consistent with the Nebraska Companies’ previous conclusion regarding the findings of the NRRI survey, and such amount provides proper financial recognition to states that look previous actions to bring rates in line with costs.

Additionally, it is important to recognize that because Category B FBM distributions will defray state costs, the Category B proposal doesn’t create a need for “new money” but instead broadens the source of collections and concomitantly provides equity between the states.²⁹ As the projections in the FBM filing show, no less than 27

²⁷ See *in the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the Florida Public Service Commission, March 19, 2007, at p. 2.

²⁸ See, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the Nebraska Rural Independent Companies, October 25, 2006, at pp. 8-10.

²⁹ See *Federal Benchmark Mechanism* at pp.4-5

jurisdictions could use Category B distributions to defray historical costs associated with rate rebalancing.³⁰

IX. Given the FBM is an Access Revenue Replacement, it Should be Considered an Access Rate Element Under Section 201.

Contrary to CTIA's assertion, the FBM is not a universal service element, but instead is an access charge element. As such, it should only be portable to those carriers that charge access charges. In its claim that "discriminating against wireless and other competitive carriers in the *distribution of access revenue replacement mechanisms* (emphasis added) would give significant cost-recovery advantages to wireline carriers," CTIA appears to recognize that the FBM is a construct that accounts for historical state access charge reductions. Given the fact that the FBM targets funding to states that have previously reduced state access charges, it is appropriate to similarly conclude that such targeted funding must be considered as an access rate element under Section 201. The Nebraska Companies submit, therefore, that the FBM, like the Restructure Mechanism, should be established as a new access charge element under the Commission's broad authority in Sections 201 and 205 of the Act.

X. Conclusion

The Commission should consider the FBM improvements to the Plan as further evidence of the Plan's viability as a fair and reasonable intercarrier compensation solution. The Nebraska Companies support the inclusion of the FBM as part of the Plan and urge the Commission to proceed expeditiously with the adoption of the Plan.

³⁰ Id. at "Effects of Missoula Plan Restructure Mechanism and Federal Benchmark Mechanism".

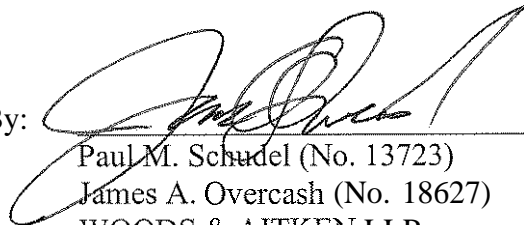
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Respectfully submitted,

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³¹ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of CTIA, March 28, 2007, at p. 9.